

ESTTA Tracking number: **ESTTA368892**

Filing date: **09/17/2010**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

## Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

### Opposer Information

Name	Resident Artist Studio, LLC
Granted to Date of previous extension	09/18/2010
Address	438 Hill Road Boxborough, MA 01719 UNITED STATES
Attorney information	A. Sidney Johnston Cesari and McKenna, LLP 88 Black Falcon Avenue Suite 271 Boston, MA 02210 UNITED STATES ASJ@c-m.com, KTG@c-m.com, kristin@c-m.com

### Applicant Information

Application No	77947865	Publication date	07/20/2010
Opposition Filing Date	09/17/2010	Opposition Period Ends	09/18/2010
Applicant	ABISec, Inc 77 Powdermill Rd Unit 4 Acton, MA 01720 UNITED STATES		

### Goods/Services Affected by Opposition


Class 009. First Use: 2006/01/00 First Use In Commerce: 2007/01/00  
All goods and services in the class are opposed, namely: Digital cameras; Digital input and output scanners; Electronic book reader; Optical character readers

### Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)

### Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	3542503	Application Date	05/14/2007
Registration Date	12/09/2008	Foreign Priority Date	NONE
Word Mark	EYE PAL		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 013. First use: First Use: 2005/11/19 First Use In Commerce: 2005/11/19 Gunsights for firearms

U.S. Application No.	77829909	Application Date	09/18/2009
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	EYE PAL		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 009. First use: First Use: 2005/11/19 First Use In Commerce: 2005/11/19 Optical lens; optical lens to improve vision; optical pinhole lens; optical pinhole lens to improve impaired vision; optical pinhole lens to improve "depth of field" of vision		

Related Proceedings	Opposition No. 91195183
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Attachments	77180102#TMSN.jpeg ( 1 page )( bytes ) 77829909#TMSN.jpeg ( 1 page )( bytes ) 146004-0009_Opp.pdf ( 6 pages )(36536 bytes )
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### Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/A. Sidney Johnston/
Name	A. Sidney Johnston
Date	09/17/2010

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Application Serial No.: 77/947,865  
For the Mark EYE-PAL  
Published in the Official Gazette on July 20, 2010  
Filing Date: March 1, 2010  
International Class: 009

_____	)
Resident Artist Studio, LLC,	)
	)
Opposer,	)
	)
v.	)
	)
ABiSee, Inc.,	)
	)
Applicant.	)
_____	)

**NOTICE OF OPPOSITION**

Resident Artist Studio, LLC, a Massachusetts Limited Liability Company and doing business at 438 Hill Road, Boxborough, Massachusetts 01719, believes that it will be damaged by registration of the alleged mark shown in Serial No. 77/947,865.

On information and belief, Application Serial No. 77/947,865 (the “Opposed Application”) for the mark EYE-PAL for Digital cameras, Digital input and output scanners, electronic book reader, optical character readers [IC 009] (“Proposed Trademark”) was filed on March 1, 2010, by ABiSee, Inc. (“Applicant”), having an address at 77 Powdermill Rd, Unit 4, Acton, Massachusetts 01720. The Proposed Trademark’s first use in commerce is claimed as January 00, 2007. The Opposed Application was published for Opposition in the Official Gazette dated July 20, 2010, and

having previously being granted an extension of time, Opposer, through its attorneys, hereby opposes the same.

As grounds for opposition, it is alleged that:

1. Since at least as early as November 19, 2005, Opposer has been using the trademark EYE PAL in connection with optical lens, optical lens to improve vision, optical pinhole lens, optical pinhole lens to improve impaired vision, optical pinhole lens to improve “depth of field” of vision and gunsights for firearms. Opposer is the owner of U.S. Trademark Registration No. 3,542,503 [IC 013] dated December 9, 2008 for the mark EYE PAL, which registration is in full force and effect. Opposer is also the owner of U.S. Application for Trademark Registration Serial No. 77/829,909 [IC 009] filed on September 18, 2009 for the mark EYE PAL, which is now the subject of an Opposition before the Trademark Trial and Appeal Board, Opposition No. 91195183.

2. Opposer is a national and international distributor of pinhole optical devices, including but not limited to optical lens, optical lens to improve vision, optical pinhole lens, optical pinhole lens to improve impaired vision, optical pinhole lens to improve “depth of field” of vision and gunsights for firearms which attach to a person’s eyeglasses to improve the person’s vision using the optical principles of a pinhole lens.

Continuously since the aforementioned dates of first use, Opposer has marketed and advertised its EYE PAL optical devices, including but not limited to optical lens, optical lens to improve vision, optical pinhole lens, optical pinhole lens to improve impaired vision, optical pinhole lens to improve “depth of field” of vision and gunsights for firearms by, among other things, prominently displaying its trademarks on labeling,

packaging, mailers, promotional material, advertising, one or more Internet web sites and at tradeshow.

3. As a result of Opposer's extensive promotion and use of the EYE PAL mark, as well as the distinctiveness of the EYE PAL mark, the relevant purchasing public has come to associate optical devices, including but not limited to optical lens, optical lens to improve vision, optical pinhole lens, optical pinhole lens to improve impaired vision, optical pinhole lens to improve "depth of field" of vision and gunsights for firearms with Opposer as the source and sponsor thereof.

4. Since a long time prior to the January 00, 2007, first use in commerce date of the Opposed Application, Opposer also has promoted and offered for sale optical devices, including but not limited to optical lens, optical lens to improve vision, optical pinhole lens, optical pinhole lens to improve impaired vision, optical pinhole lens to improve "depth of field" of vision and gunsights for firearms under the trademark EYE PAL at tradeshow, through its website [www.eyepalusa.com](http://www.eyepalusa.com) for firearm sighting, archery sighting, and other vision improvement purposes.

5. As a result of the aforementioned uses by Opposer of the EYE PAL marks, Opposer has developed substantial common law rights in said marks.

6. Opposer is also the owner of Commonwealth of Massachusetts Trademark Registration for the mark EYE PAL, Reg. No. 72631 dated May 10, 2010 in Class 9 - Electrical and Scientific Apparatus, and in Class 13 - Firearms, which registration is in full force and effect.

**FIRST CLAIM FOR RELIEF**

**(Likelihood of Confusion with Opposer's Registered Mark and Opposer's Mark  
subject of Opposer's Application for Registration)**

7. Opposer realleges and incorporates herein by reference the allegations in Paragraphs 1 through 6 of this Opposition.

8. In view of the similarity of the Proposed Trademark EYE-PAL and Opposer's registered mark EYE PAL, Applicant's use and registration of EYE-PAL is likely to cause confusion, or to cause mistake, or to deceive. The likelihood of confusion among customers is high in this case because both goods are directed to the same group of the public, those needing vision enhancement, and both goods are sold through similar trade channels such as the internet. Further, actual confusion between the goods of Opposer and of Applicant have occurred. Customers of Opposer have already been actually confused by Applicant's use of its proposed mark EYE-PAL, and have complained to Opposer that they were unable to find Opposer on the internet because of a clutter of web pages arising from Applicant's presence on the internet using the proposed mark EYE-PAL. Also, at least one customer of Applicant contacted Opposer for help with his product purchased from Applicant. Accordingly, Applicant's Proposed Trademark is thus unregistrable under §2(d) of the United States Trademark Act, 15 U.S.C. §1052(d), as amended.

9. As a consequence, if Applicant is permitted to use and register the Proposed Trademark, Opposer will suffer injury to the value of its EYE PAL marks, control over its goodwill and reputation, and ability to move into new markets.

10. Opposer will be damaged by the registration of the Proposed Trademark because registration of the Proposed Trademark would give Applicant *prima facie* evidence of ownership of, and exclusive rights to use in commerce, a mark that is confusingly similar to Opposer's mark EYE PAL.

11. In view of the above, Applicant is not entitled to registration of the Proposed Trademark.

### **SECOND CLAIM FOR RELIEF**

#### **(Likelihood of Confusion with Opposer's Common Law Mark)**

12. Opposer realleges and incorporates herein by reference the allegations in paragraphs 1-11 of this opposition.

13. Opposer's goods marketed under the mark EYE PAL and Opposer's advertising bearing this mark, have been distributed in a trade area where Applicant is likely to do business. As a result, this mark has come to indicate to those with whom Opposer does business that products bearing the marks originate only with Opposer. As a result of this association, Applicant's use of the alleged mark EYE-PAL is likely to cause confusion with such persons and entities, and violates Opposer's prior rights under Opposer's prior common law rights to the mark EYE PAL.

WHEREFORE, Opposer prays that this Opposition be sustained, that said Application Serial No. 77/947,865 be refused, and that no registration be issued thereon to Applicant.

Please charge the \$300.00 filing fee for this Notice of Opposition to Deposit Account No. 03-1237, with reference to 146004-0009. Please direct all future correspondence to the undersigned.

Respectfully Submitted,

Date: September 17, 2010

/A. Sidney Johnston/  
A. Sidney Johnston  
Thomas O'Konski  
Kevin Gannon  
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**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing pleading was served by first-class mail postage prepaid on September 17, 2010 to:

Leon Reznik  
ABiSee, Inc.  
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Gregory M. Krakau  
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